

Assembly Bill 2842 (Leno)
Political Reform Act: Contribution Limits
Version: Introduced, 2/20/04
Status: Assembly Elections Committee
Urgency measure

Executive Summary

The implementation of contribution limits has exacerbated concerns regarding self-funded candidates who contribute large amounts of personal funds to their campaigns. AB 2842 attempts to solve this problem by allowing legislative candidates to accept contributions above the limits when an opponent contributes personal funds in excess of certain thresholds. The bill also restricts personal contributions 30 days before an election and includes loans from commercial institutions in the \$100,000 personal loan limit for state candidates. Although AB 2842 addresses inequities between self-funded and other candidates, the bill's doubling, tripling, or even lifting of limits arguably increases the bias or appearance of bias associated with contributions.

Recommendation

Staff recommends that the Commission take no position on the bill at this time. Staff further recommends amendments to include language shifting to the General Fund attorney fees and costs arising out of a successful legal challenge to the bill's provisions and an appropriation to carry out the bill's requirements.

Background

AB 2842 would establish new provisions regarding self-funded candidates and personal loans by candidates to their campaigns. In part, this bill responds to the concern that the unfair advantage that wealthy candidates have over their opponents is exacerbated by contribution limits. The recent recall and March elections, for example, included several candidates who contributed large amounts to their own campaigns.

In addition, the bill refers to the recent Sacramento Superior Court decision in *Camp v. Schwarzenegger*, which barred Governor Schwarzenegger from using campaign funds to repay a \$4.5 million personal loan, and cites the need to clarify the law regarding candidate loans prior to the November 2004 statewide general election.

Analysis

AB 2842 would: (1) allow a legislative candidate to collect contributions above the limits if an opponent contributes personal funds to his or her campaign in excess of certain thresholds; (2) prohibit a candidate for elective state office from contributing personal funds to his or her controlled committee 30 days prior to an election; and (3) amend section 85307 to include loans obtained from a commercial lending institution in the \$100,000 personal loan limit.

As an urgency measure, the bill would become effective immediately.

Changes to Contribution Limits for Legislative Candidates

For elections occurring between January 1, 2003, and December 31, 2004, the current contribution limit for Senate and Assembly candidates is \$3,200 per person and \$6,400 per small contributor committee. AB 2842 would add section 85303.3 to the Act and modify contribution limits for legislative candidates when certain conditions apply.

If the total amount of personal funds contributed by an opposing candidate to his/her campaign exceeds the total amount of campaign contributions raised by a legislative candidate, excluding personal contributions, by:

- more than \$300K, but less than \$600K, the candidate would be allowed to accept contributions at twice the limit.
- more than \$600K, but less than \$900K, the candidate would be allowed to accept contributions at three times the limit.
- more than \$900K, contribution limits would not apply to the candidate.

The amount of funds raised by a candidate under increased levels could not exceed the amount of personal funds contributed by the opposing candidate to his or her campaign for each election.

Section 85303.4 would require a legislative candidate to file a statement indicating the amount of personal funds that he or she intends to spend. This statement would be filed at the same time as the statement of intent to be a candidate (Form 501).

Section 85303.3(e) would require a candidate to notify all other candidates, and the Secretary of State, within 24 hours of contributing personal funds that, in the aggregate, exceed \$300K, \$600K, or \$900K. Upon notification, any candidate eligible to accept contributions at the increased contribution limits could begin accepting contributions at the higher level.

Staff Concerns

Staff has raised several concerns regarding the language and practical administration of this section of the bill. Concerns and clarification questions include:

- **Tracking and identification of candidate eligibility:** The bill does not indicate what process, if any, will be used to identify and track when a candidate meets eligibility requirements for increased limits and when a candidate has collected contributions equal to the amount of their opponent's personal contributions. Without visible "flags" that indicate a candidate's initial and ongoing eligibility, this approach could prove confusing to both candidates and contributors. Enforcement of these provisions could also be extremely difficult and require significant investigation. Auditing of candidates could also become more challenging and time consuming.
- **Determination of the amount of an opponent's personal contributions:** Aside from the notification sent at \$300K, \$600K, and \$900K intervals, the bill appears to place responsibility for tracking the amount of an opponent's personal contributions in the hands of each candidate. It may be difficult for a candidate to determine, at any given time, the amount of their opponent's personal contributions and whether they are eligible for increased limits. This problem could be addressed through modification of campaign reporting forms and the Secretary of State's online system.

- **Tracking of contributions collected under increased contribution limits:** As described above, the amount of contributions collected at higher levels may not exceed the personal funds contributed by the opponent. Additional clarification is required to confirm whether this “cap amount” increases each time an opposing candidate contributes personal funds. Handling of contributions collected above the limits after a candidate reaches parity, and contributor liability for any contributions made in excess of the limits, could also be clarified.
- **Changes to record keeping and campaign disclosure forms:** The Commission may want to consider whether reporting forms and recordkeeping rules will need to be revised to collect additional information from candidates. Modifications to the Secretary of State’s online system may also be required.
- **Post-election contribution limits:** The bill does not indicate whether increased contribution limits would also apply to post-election fundraising. The bill’s author may want to address whether an increase in a candidate’s contribution limit would continue to apply to contributions received after the election.
- **Statement of “spending” intentions:** Candidates would be required to indicate, at the time of filing their intention to be a candidate, the amount of personal funds that they intend to “spend” on their campaign. Since the word, “spend,” may prove confusing in relation to voluntary expenditure limits, the author may want to substitute the term, “contribute.”
- **Penalties for exceeding intended personal spending:** The bill does not state whether a candidate who contributes an amount higher than he or she stated on the intention form would be in violation of the Act. The author may wish to clarify whether candidates will be expected to amend their statement if personal contributions exceed the original amount. The author may also want to consider whether this initial notification could be eliminated in favor of “real-time” contribution information.
- **Potential confusion with voluntary expenditure limits:** Under section 85402, expenditure limits are lifted if an opposing candidate contributes personal funds in excess of the expenditure limit. A candidate who contributes excess personal funds must also notify his/her opponents. AB 2842 introduces additional complexity to this process and may confuse candidates as they comply with existing contribution limits and expenditure limits. This potential confusion could be addressed by an automated notice sent by the Secretary of State.
- **Notification of personal contributions:** Section 85303.3(e) requires 24 hour notification of personal contributions to “all other candidates.” The author may want to clarify whether this notification should only be sent to other candidates running for the same seat.
- **Vague or unclear terminology:** Section 85303.3 uses the term “legislative candidates.” For the sake of consistency with the Act, the author may want to use the term, “candidate for elective state office other than statewide elective office.” Section 85303.3(f)(2)(D) and (E) includes a reference to the “election cycle.” The author may want to clarify whether this refers to the 90-day cycle defined in section 85204 or whether the provisions should refer to the point at which the candidate files a statement of intention (Form 501).

Whether this component of the bill furthers the purposes of the Act is a question for the Commission to consider. From one perspective, this bill provides greater equity for candidates running against self-funded candidates. Significantly, this balance would be reached without restricting the rights of wealthier candidates to contribute to their own campaigns. Federal law has a similar set of provisions which adjusts a candidate's contribution limits in response to an opponent's contributions from personal funds.

On the other hand, the Commission may want to consider whether this bill offers a reasonable adjustment to contribution limits and offers the best solution for addressing concerns regarding self-funded candidates. If contribution limits are intended to minimize the influence that individual donors have on a candidate, does doubling, tripling, or even removing contribution limits present too great an opportunity for corruption or the appearance of corruption? The Commission is encouraged to consider this question and provide their thoughts to staff.

Restriction on Personal Contributions 30 Days before an Election

The second component of the bill would prohibit a candidate for elective state office from contributing personal funds to his or her controlled committee 30 days prior to an election. For legislative candidates, this restriction appears to work in tandem with the lifting of contribution limits to ensure that a candidate has time to raise funds to compete with a self-funded opponent.

Staff Concerns

Staff has raised three concerns regarding this restriction on pre-election contributions:

- **Applicability to all state candidates:** Section 85303.5 uses the term, "candidate for elective state office." The author may wish to clarify whether this 30-day restriction is meant to apply to both legislative candidates and statewide candidates. Depending on intent, the author may wish to use the term, "candidate for elective state office other than statewide elective office."
- **Applicability to all elections:** The bill would restrict personal contributions to a candidate's controlled committee 30 days before an election. The author may wish to clarify whether this ban applies to any election or just one in which the candidate is on the ballot.
- **Constitutional considerations:** This ban raises significant constitutional considerations. It is likely that a 30-day ban on personal contributions would bring significant legal challenges. Temporal bans on the making of contributions have been struck down in a number of jurisdictions. (See *Shrink Missouri Gov't PAC v. Maupin* (1996) 922 F.Supp. 1413 *affd.* (1995) 71 F.3d 1422; *State v. Dodd* (1990) 561 So.2d 263.) In addition, limiting a candidate's contribution to his or her campaign has generally been seen as an unconstitutional expenditure limit and has sometimes been characterized as a violation of the First Amendment itself. (See *Service Employees International Union v. Fair Political Practices Commission* (1992) 955 F.2d 1312.)

Change to Definition of Personal Loans

The bill would also modify existing law that prohibits a state candidate from personally loaning more than \$100,000 to his or her campaign at any one time. The bill would now include the proceeds of a loan obtained from commercial lending institution in the outstanding loan balance.

Staff Concerns

Staff has not raised any significant concerns regarding this provision of the bill. The Commission is currently scheduled to review section 85307 during pre-notice discussion in August of this year. Other pending legislation, SB 1449 (Ross Johnson) also addresses this topic.

General Considerations

Staff has also raised the following overall concerns regarding AB 2842:

Funding for Legal Challenges

The Commission may want to request language to deal with costs arising from litigation, in the event that provisions of this bill, especially the 30-day ban on personal contributions, is challenged. Although the Attorney General's Office may be available to defend the Commission at no charge in these actions, if plaintiffs prevail, costs and attorney fees could be awarded against our agency. For this reason, the Commission may wish to request that each of these measures be amended to include the following language:

If this section is successfully challenged and a court awards an opposing party attorney fees and costs, those attorney fees and costs shall be paid from the General Fund and the Commission's budget shall not be reduced accordingly.

In the alternative, this language could be broadened to apply to any challenge to a provision of the Political Reform Act.

Unfunded Costs

Each time a substantive new provision is added to the Political Reform Act, telephone and written advice requests and enforcement workload increase. It is estimated that this bill will give rise to approximately \$100,000 in costs for form and campaign manual updates, regulatory implementation, telephone and written advice, and enforcement workload. The Commission is urged to seek reimbursement for these costs, as it is this layering of unfunded new programs that forces the agency to prioritize advice and enforcement workload and, ultimately, to abandon some workload.